IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

FAO No.33 of 1986

Date of Decision : 13.2.2009

Employees State Insurance Corporation

..Appellant.

Vs.

Bhagwant Rai

..Respondent.

CORAM : HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: Mr.Vikas Suri, Sr.Standing Counsel for ESIC-appellant.

None for the respondent.

RAKESH KUMAR JAIN, J.(ORAL)

This appeal is directed against the order dated 26.10.1987 passed by the Employee State Insurance Court whereby it has been held that Section 85B of Employees' State Insurance Act, 1948 (for short the `Act') was inserted in the Act vide the Employees' State Insurance (Amendment) Act (No.38 of 1975) (for short Act No.38 of 1975) with effect from 1.9.1975 which has been repealed by the Repealing and Amending Act No.38 of 1978 (for short Act No.38 of 1978) which came into force w.e.f. 26.11.78, therefore, Section 85B ceases to have operation after 26.11.1978 and Employee State Insurance Corporation (for short `the Corporation') had no jurisdiction and competence to impose damages on the firm.

Respondent Bhagwant Rai, Principal Employer of M/s Sandipt

Udhyog, Jagadhari filed a petition under Sections 75/77 of the Act before Employees State Insurance Court, Jagadhari (for short `ESI Court') alleging that the business of the firm has been closed in the year 1980. The firm was covered under the Act for the purpose of payment of Employers contribution as well as that of the employees after deducting the same from the wages. The firm had to make payment of contribution to the Corporation but due to business crisis, some amount remained due towards the Corporation which though was paid immediately after the receipt of the demand notice yet the Corporation was not satisfied on the ground of its late deposit and had imposed an amount of damages under Section 85B of the Act to the tune of Rs.2598.75 paise. This petition was contested by the Corporation. During the course of proceedings before the ESI Court, it was argued on behalf of the firm that Section 85B (power to recover damages) was inserted in the Principal Act by virtue of Act No.38 of 1975 but said Act has been repealed by the Act No.38 of 1978, therefore, the firm was not liable to pay damages since Section 85B was already repealed. The learned Court below accepted this argument of the firm and allowed the petition vide impugned order dated 26.10.1987.

Sh.Vikas Suri, Sr.Standing counsel appearing on behalf of the appellant-Corporation has vehemently contended that view taken by the learned Court below is patently illegal because it appears that the learned Court below has only read the title of the Act No.38 of 1978 and has not read Section 4 of the said Act, which provides as under :

> "The repeal by this Act of any enactment shall not affect any other enactment in which the repealed enactment has been applied, incorporated or referred to;

and this Act shall not affect the validity, invalidity, effect or consequences of anything already done or suffered, or any right, title, obligation or liability already acquired, accrued or incurred or any remedy or proceeding in respect thereof or any release or discharge or or from any debt, penalty, obligation, liability, claim or demand, or any indemnity already granted, or the proof of any past act or thing;

nor shall this Act affect any principle or rule of law, or established jurisdiction, form or course of pleading, practice or procedure, or existing usage, custom, privilege, restriction, exemption, office or appointment, notwithstanding that the same respectively may have been in any manner affirmed or recognised or derived by, in or from any enactment hereby repealed;

nor shall the repeal by this Act of any enactment revive or restore any jurisdiction, office, custom, liability, right, title, privilege, restriction, exemption, usage, practice, procedure or other matter or thing not now existing or in force."

In order to further buttress his argument, counsel for the appellant has referred to Section 6 A of the General Clauses Act (10 of 1897) which reads as under:

"**Repeal of Act making textual amendment in Act or Regulation-**

Where any [Central Act] or Regulation made after the commencement of this Act repeals any enactment by which the text of any [Central Act] or Regulation was amended by the express omission, insertion or substitution of any matter, then, unless a different intention appears, the repeal shall not affect the continuance of any such amendment made by the enactment so repealed and in operation at the time of such repeal."

Learned counsel for the appellant has further relied upon a

decision of the Gauhati High Court rendered in the case of **The Employees' State Insurance Corporation, Gauhati Vs. M/s Associated Industries (Assam), Chandrapur 1990 LAB IC 195.**

No one has put in appearance on behalf of the respondent.

I have given my thoughtful consideration to the arguments raised by the counsel for the appellant and I am of the view that the present appeal deserves to be allowed.

As per the legislative Scheme, certain provisions are inserted or deleted from the Principal Act by virtue of enactment of Amendment Act, which, on the expiry of their utility or having become redundant are ultimately repealed by Repealing and Amendment Act. In the present case also, Section 85 B was not provided in the Principal Act and was inserted for the first time by virtue of the Act No.38 of 1975 and since then provisions of 85B are being enforced. By virtue of the Act No.38 of 1978, the Parliament has repealed large number of Amendment Acts which had become redundant or had served their purpose but while doing so Saving Clause was provided in Section 4 of the Act No.38 of 1978. Moreover, dispute in this case is covered by the judgment of Gauhati High Court in the **Employees State Corporation, Gauhati Vs. M/s Associated Industries (supra)** in which it was held as under :

> "The case at hand is fully covered by the aforesaid decision of the Supreme Court. It also falls with the four corners of S.6A of the General Clauses Act. By the Amendment Act of 1975, S.85B was inserted in the text of the principal Act and thereby the text of the said Act was amended. The said

amendment did not get affected by the repeal of the Amending Act. S.85B, therefore, continued to be a part of the text of the principal Act even after repeal of the Amending Act and it continued to be in force on the date of levy of damages in the instant case under the said section. In fact, it continues to be in operation even till today. Mr.A.K.Phukan, learned counsel for the respondent placed reliance on certain decisions of the Supreme Court reported in AIR 1975 SC 155. The aforesaid decision has no application to the facts of the present case. The point involved in the present case is fully covered by the decision of the Supreme Court in the case of Jethanand, AIR 1960 SC 89 (supra). Mr.Phukan also referred to S.4 of the Repealing Act which is a saving provision and pointed out that the amendment made by the Amending Act was not covered by the said section, and as such, it should be deemed to have been repealed. It, however, appears that the Supreme Court also considered similar argument in Jethanand (supra) and held that in view of the provisions of S.6-A of the General Clauses Act, argument based on S.4 of the Repealing Act do not in any way help the appellant. In view of the aforesaid decision of the Supreme Court, submission of Mr.Phukan cannot be accepted. I, therefore, hold that the amendments made by the amending Act of 1975 continued to be in force despite repeal of the Amending Act by the Repealing and Amendment Act, 1978 and as such, the ESI Corporation did not commit any

jurisdictional error in exercising power under that section for the purpose of levying of damages in the instant case. The order of the E.S.I. Court, therefore, is not tenable in law and is accordingly set aside."

In view of the above discussion, the present appeal is allowed and the impugned order dated 26.10.1987 is set aside. Section 85B has already been saved in the Principal Act, therefore, the petition filed under Sections 75/77 of the Act is dismissed. No costs.

(Rakesh Kumar Jain)
Judge

13.2.2009
Meenu

Refer to reporter - Yes